COMMISSIONERS APPROVAL

CHILCOTT y

LUND aa

THOMPSON aa

TAYLOR (Clerk & Recorder)

Date.....September 06, 2006

Members Present.....Commissioner Greg Chilcott, Commissioner Betty Lund and Commissioner Alan Thompson

Minutes: Glenda Wiles

The Board of County Commissioners met to discuss and review a Flood Plain variance for Northwest Energy. Present at this meeting was Flood Plain Administrator Laura Hendrix, North Western Energy Representatives and Engineer John Horat.

Minutes of that meeting are as follows:

Ravalli County Board of County Commissioners (BCC)
Meeting Minutes for
September 6, 2006
1:00 p.m.
Commissioners Meeting Room, 215 S. 4th Street, Hamilton, Montana

Public Hearing for NorthWestern Energy Floodplain Variance Request (FA-06-11)

1. **Call to order**

Commissioner Chilcott called the meeting to order at 1:00 PM.

2. **BCC and Staff**

(A) BCC

Greg Chilcott (Present)
Alan Thompson (Present)
Betty Lund (Present)

(B) Staff

Laura Hendrix

3. **Public Hearing**

(A) **Staff Report on the Variance Request**
Laura Hendrix presented that the Floodplain Variance Request was to locate 3 power pole transmission structures in the floodway portion of the 100-year floodplain, an action that varies from the development standards in the Floodplain Regulations. Staff recommended that the installation of the 3 power pole transmission lines in the floodway be approved based on the positive findings of fact for each of the variance review criteria.

(B) **Public Comment on the Variance Request**

(i) Persons in Favor
Eddy Stewart, Sid DeBarathy, and Rick Walsh all representatives of NorthWestern Energy expressed approval of the variance as did **John Horat** of Bitterroot Engineering and Design.

(ii) Persons Opposed
There were none.

(iii)Rebuttal
There was none.

(iv)Close public comment

(C) **Board Deliberation on the Variance Request**

(i) Board discussion and action on the Variance Request

(a) The Board had previously reviewed the Eight Variance Criteria and therefore did not discuss the criteria. **Commissioner Lund** asked for clarification on Larry Shock's concerns about pole 0-9. **Laura Hendrix** indicated that pole 0-9 was not a component of the variance request since it is not located in the floodway, but a professional engineer did respond to the concerns with a certified letter. **Commissioner Thompson** questioned why the power pole project had been delayed since the bridge is nearing completion. **Laura Hendrix** responded that the delay was most likely due to the Montana Department of Transportation neglecting to include utilities in the bridge permit that was granted two years ago.

(b) Board Decision

Commissioner Thompson motioned that the variance request from the Ravalli County Floodplain Regulations, Chapter 4, Table 4-6-1 for the proposed installation of the 3 power pole transmission lines in the floodway portion of the 100-year floodplain be **approved** based on the positive findings of fact for each of the variance review criteria as noted in the staff report.

Commissioner Lund seconded the motion and the Commissioners voted 3 – 0 to **approve** the variance.

4. **Close Public Hearing**

The Board of County Commissioners met with representatives of the Department of Commerce for discussion and review of Juvenile Detention licensing.

In other business, the Board of County Commissioners met to review and award bids for saleable dirt at the Ravalli County Airport. The bid was for 250-300 yards of dirt. The sole bid was received from Dale Carter for $2.27 per yard. The dirt is to be removed within 20 days. Commissioner Lund moved to accept the bid from Dale Carter. Commissioner Thompson seconded the motion, and all voted 'aye'.

The remainder of the day was spent in office management.

Planning Department
215 South 4th Street, Suite F
Hamilton, MT 59840
Phone 406-375-6530
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planning@ravallicounty.mt.gov

REQUEST FOR COMMISSION ACTION

OG-06-08-984

Meeting: September 6, 2006 at 1:00 pm
Request: To act on a Floodplain Permit Application Variance Request

I. ACTION REQUESTED

This is a request from NorthWestern Energy to approve a **Variance Request** to meet the minimum development standards of the adopted Ravalli County Floodplain Regulations as part of a Floodplain Permit Application.

II. BACKGROUND

NorthWestern Energy has submitted a Floodplain Permit Application and Variance Request (file reference FA-06-11) to complete work within the floodplain of the Bitterroot River. The project consists of relocating 17 total power pole transmission lines in the 100-year floodplain. Of those 17 power poles, 14 are located in the flood fringe and 3 are located in the floodway. The adopted Floodplain Regulations development standards for utility lines specify that towers or other appurtenant structures are not to be located in the floodway. The applicant's proposal to locate 3 power poles in the floodway portion of the 100-year floodplain varies from the development standards of the Ravalli County Floodplain Regulations.

III. RECOMMENDED MOTIONS

That the variance request from the Ravalli County Floodplain Regulations, Chapter 4, Table 4-6-1 for the proposed installation of the 3 power pole transmission lines in the floodway portion of the 100-year floodplain be **approved** based on the positive findings of fact for each of the variance review criteria.

IV. STAFF REPORT

VARIANCE REQUEST
The applicant has requested a variance from the Minimum Development Standards for Utility Lines in Chapter 4, Table 4-6-1, of the Ravalli County Floodplain Regulations, that specifies "towers and other appurtenant structures are designed and placed to withstand and minimally obstruct flood flows and are not located in the floodway".

Compliance with Variance Review Criteria

A. There is a hardship on the applicant in carrying out the strict letter of this Code as distinguished from a mere inconvenience.

Findings:

1. The application indicates that there is a significant hardship since the project as proposed is within the Montana Department of Transportation's (MDT) existing road easement, but an alternate location would not fall within the easement and would require access and permission from several landowners.
2. An alternate location would still require transmission lines to be located in the floodway.
3. The power poles must meet the National Electric Safety Code requirements.
4. The Floodplain Regulations do not contain a definition of "hardship" or "inconvenience".

Conclusions:

1. A hardship in carrying out the strict letter of this Code exists.
2. Relocating the power poles to an alternate location may delay the MDT's US Highway 93 widening project.
3. There is no other viable alternative for relocating the power poles outside of the floodway at this project site.
4. There is a **positive** finding on this review criterion.

B. The hardship does not directly result from the actions of the applicant.

Findings:

1. The application states that the relocation of the power poles was a requirement set forth by the MDT as part of the US Highway 93 widening project.
2. The existing transmission line is in direct conflict with MDT's construction plans.

Conclusions:

1. The hardship is not a direct result of the actions of the applicant.
2. There is a **positive** finding on this review criterion.

C. The variance is the only option available to the applicant to afford relief from the hardship.

Findings:

1. The application asserts that alternative routes researched for this project would result in greater disturbance to nearby residents and riparian vegetation.

Conclusions:

1. The variance is the only option available to the applicant to afford relief from the hardship.
2. As indicated above, the variance relieves the applicant from locating an alternative route, by using the existing easement.
3. There is a **positive** finding on this review criterion.

D. The variance is the minimum necessary to afford relief from the hardship.

Findings:

1. The application identifies that the number of structures in the floodway has been minimized to three.
2. The proposed power poles have been designed to incorporate a minimal amount of fill and are located as far from the river channel as possible.

Conclusions:

1. The variance is the minimum necessary to afford relief from the hardship.
2. The three power pole structures, as proposed, are designed and placed to withstand and minimally obstruct flood flows.
3. There is a **positive** finding on this review criterion.

E. **The granting of the variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties.**

Findings:

1. Chapter 1-6 (a) of the Ravalli County Floodplain Regulations states: "The purpose of this code is to promote the public health, safety, and general welfare. To that end, this code shall be implemented to protect human life and health to the greatest extent."
2. The application declares that the proposed project will not be detrimental to public health or safety as the proposed transmission line is replacing an existing transmission line.
3. The application maintains that the proposed power poles are located as far from the river channel as possible and should provide safe and easy access during flood conditions.

Conclusions:

1. The granting of the variance will not be detrimental to the health, safety or general welfare of the public or injurious to adjoining properties.
2. Given the fact that the proposed power poles are simply replacing existing structures, it does not appear that there would be an increase threat to life and property.
3. There is a **positive** finding on this review criterion

F. **The variance will not result in increased flood hazards, present additional threats to public safety, be an extraordinary public expense, create a nuisance, or conflict with existing state or other local laws.**

Findings:

1. Chapter 1-8 (a) of the Ravalli County Floodplain Regulations states that "proposed projects shall comply with all other applicable local, state and federal rules or regulations".
2. The Administrative Rules of Montana (ARM) 36.15.602 (4b) states "towers and other appurtenant structures are designed and placed to withstand and offer minimal obstruction to flood flows", but does not restrict power poles from being located in the floodway.
3. The application verifies that the proposed project has been designed and will be constructed in accordance with all applicable rules and regulations.
4. The application indicates that minimal fill will be placed above ground.
5. The applicant assumes all responsibility for construction, operation, maintenance and associated costs of the proposed structures.

Conclusions:

1. The proposed variance will not result in increased flood hazards, present additional threats to public safety, be an extraordinary public expense, create a nuisance, or conflict with existing state or other local laws.
2. The project as proposed is in compliance with the development standards of ARM 36.15.602 (4) and involves only a minimal amount of fill which should not result in an increase in base flood flows.
3. There is a **positive** finding on this review criterion.

G. **A reasonable alternate location that would not require a variance is not available.**

Findings:

1. The application states that all alternative routes studied would also require floodway crossings and therefore the request for a variance.

Conclusions:

1. Reasonable alternate locations that would not require a variance are not available.
2. There is a **positive** finding on this review criterion.

H. **The proposed use would be adequately protected and flood-proofed.**

Findings:

1. The application demonstrates that proposed power lines in the floodway are designed to be adequately protected and flood-proofed during times of flooding.
2. Larry Schock, with the Montana Department of Natural Resources and Conservation (DNRC) commented that the proposed power poles are located "in the hydraulic shadow of the bridge and approach fill". He also noted the use of special corrugated metal pipe (CMP) structures to protect the power poles located in the floodway.

Conclusions:

1. The proposed structures will be adequately protected and flood-proofed with specially designed CMP culverts and fill material.
2. There is a **positive** finding on this review criterion.

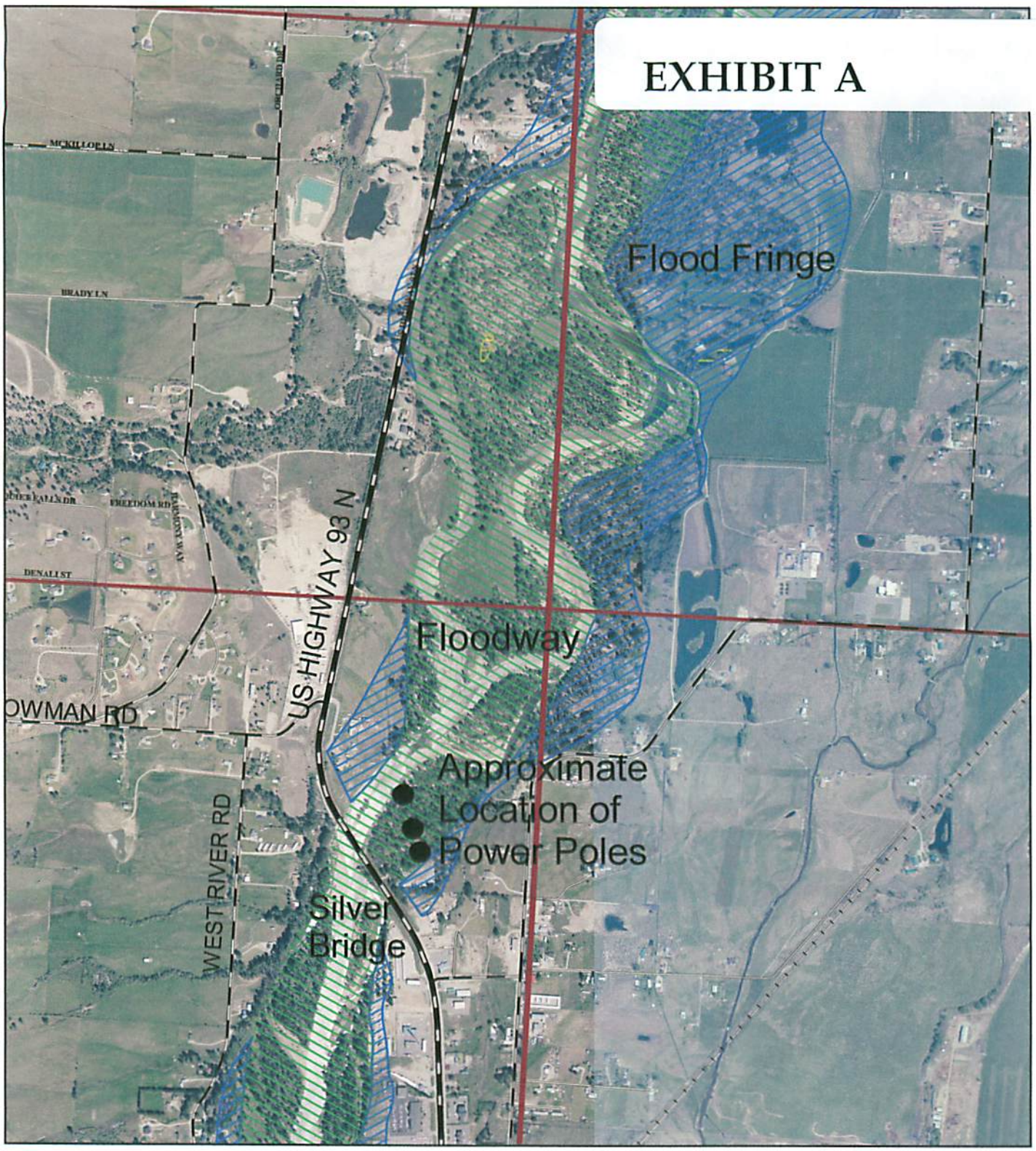
V. **REMAINING ISSUES:**

1. Within five (5) days following the decision and if the Board approves the variance or approves it with conditions, the Floodplain Administrator shall mail the decision to the Department of Natural Resources and Conservation for concurrence, modification, or rejection (Note: The DNRC has the ability to modify or void the decision of the Board of County Commissioners.)
2. The Floodplain Administrator shall mail the variance decision to the applicant within seven (7) days of the date of the decision.

Attachments: Exhibit A-Floodplain Map
Exhibit A-1-Ravalli County Floodplain Regulations, Table 4-6-1
Exhibit A-2-Floodplain Variance Application
Exhibit A-3-ARM 36.15.602
Exhibit A-4-Email from Larry Schock, DNRC

Staff: Laura Hendrix, CFM
Floodplain Administrator

Date: August 29, 2006



NorthWestern Energy Floodplain Variance FA-06-11

Green=Floodway Blue=Flood Fringe

T06NR21W - Sec 12 & 13

N

2000 0 2000 Feet

EXHIBIT A-1

Temporary flow reduction for instream construction work	Permit required	Permit required	The wo on fish.
	Floodway	Floodfringe	Minimum Standards if Allowable (Also see Section 4-5)
Water diversion for irrigation purposes	Permit required	Permit required	a. The project is designed to withstand a 100-year flood event. b. The project does not increase the base flood elevation at or near the project. c. The project does not adversely affect adjoining properties. d. The project does not adversely affect the river or river functions. e. The project allows passage of water craft in low flows. d. The project allows normal movement of fish through the reach.
Fish habitat structure	Permit required	Permit required	None
Pond, gravel pit, drainage retention structure, drainage detention structure, or similar excavation	Permit required	Permit required	a. A buffer strip of undisturbed land is left between the edge of the channel and the edge of the excavation. This buffer strip shall be of sufficient width to prevent flood flows from flowing into and/or out of the excavation. b. Excavated material is disposed of or stockpiled outside the floodway.
Bridge, culvert (road and railroad)	Permit required	Permit required	a. The crossing is designed to offer minimal obstruction to flood flow. b. The project shall not increase the base flood elevation more than one-half (1/2) foot (See Section 4-5) nor cause a significant increase in flood velocities. Between Hamilton and Stevensville, there shall be no increase in the base flood elevation. c. The bottom of the bridge span shall be at least two (2) feet above the base flood elevation.
Limited fill (road and railroad embankments not associated with a bridge crossing)	Permit required	Permit required	a. Reasonable alternate transportation routes outside the designated floodway are not available. b. The encroachment is located as far from the river channel as possible. c. The project does not result in a cumulative increase in base flood elevations of more than one-half (1/2) foot (See Section 4-5) nor cause a significant increase in flood velocities.
Fill	Prohibited	Permit required	a. The fill is needed to comply with the development standards as contained herein. b. The amount of fill is the minimum necessary.
Utility lines (buried or suspended)	Permit required	Permit required	a. The lowest point of the suspended line shall be at least six (6) feet above the base flood elevation. b. Towers and other appurtenant structures are designed and placed to withstand and minimally obstruct flood flows and are not located in the floodway. c. Utility transmission lines carrying toxic or flammable materials and crossing a river channel are buried to a depth of at least twice the calculated maximum depth of scour for a 100-year flood event.

Floodplain Variance Application
Ravalli County, Montana

RECEIVED
AUG 04 2006
Ravalli County Planning Dept.

FA-06-11

IC 06 08 1243

EXHIBIT A-2

1. Project Name Missoula-Hamilton 69kV Transmission Line

2. Applicant Information:

   Name: NorthWestern Energy

   Address: 40 East Broadway Street

   City/State/Zip: Butte, MT 59701

   Telephone: (406) 497-3917 (daytime)

3. Describe the requested variance.

NortWestern Energy is requesting a floodplain variance to install transmission structures associated with relocation of an existing electrical transmission line. The project involves the relocation of approximately 5-miles of NorthWestern Energy's existing 69 kV single wood pole transmission line between Hamilton, running north to Woodside, Montana. The Montana Department of Transportation (MDT) is involved in a major highway-widening project on US Highway 93 from Hamilton to Missoula, and this line is in conflict with the proposed construction activities. Please see attached response to Section 4. The line relocation is being requested by MDT.

4. Describe how the requested variance meets each of the following conditions: (Attach additional pages.)
   (1) There is a hardship on the applicant in carrying out the strict letter of this Floodplain Regulations as distinguished from a mere inconvenience.

   (2) The hardship does not directly result from the actions of the applicant.

   (3) The variance is the only option available to the applicant to afford relief from the hardship.

   (4) The variance is the minimum necessary to afford relief from the hardship.

   (5) The granting of the variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties.

   (6) The variance will not result in increased flood hazards, present additional threats to public safety, be an extraordinary public expense, create a nuisance, or conflict with existing state or other local laws.

   (7) A reasonable alternate location that would not require a variance is not available.

   (8) The proposed use would be adequately protected and flood-proofed.

Note: The Board of County Commissioners may revoke an approval if it determines that information provided by the applicant, and/or the applicant's agent, and upon which such decision was based, is inaccurate. Furthermore, a person commits an offense under Section 45-7-203 MCA, if he purposely misleads a public servant in performing his official duties. Therefore, please complete the application accurately and provide all information requested.

(1) There is a hardship on the applicant in carrying out the strict letter of this Floodplain Regulations as distinguished from a mere inconvenience.

Construction of the proposed transmission line in an alternate location would present a significant hardship for the following reasons:

- An alternate location would still require a floodway crossing, and variance request.
- The project would not be located within an existing easement with the MDT, and would require access and permission from several landowners;
- Inability to install transmission structures within the floodway would add significant cost to the project in order to meet National Electric Safety Code requirements.

(2) The hardship does not directly result from the actions of the applicant.

This project is necessitated due to a major highway-widening project on US Highway 93 from Hamilton to Missoula being performed by the Montana Department of Transportation (MDT). The existing NorthWestern transmission line is in direct conflict with MDT's proposed construction activities, and MDT has requested that NorthWestern relocate the line.

(3) The variance is the only option available to the applicant to afford relief from the hardship.

All alternative routes studied for this project also include multiple floodway crossings, would result in greater disturbance to residents and riparian habitat, and do not utilize the existing right-of-ways for the majority of the project. The proposed route also keeps the transmission line in an existing transportation and utility corridor, thereby minimizing additional impacts of a new route.

(4) The variance is the minimum necessary to afford relief from the hardship.

Structures have been minimized as much as possible within the floodway, and have been designed to have minimal fill placed above the existing ground surface. Structures have been designed to be as far away from waterways as possible, while still meeting NESC.

(5) The granting of the variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties.

The proposed transmission line would replace an existing line that was constructed in a similar location, and would not present detriment to public health or safety. The proposed line is located along an existing right-of-way, which would provide safe and easy access during flood conditions. Structures have been located as far from the water body as possible, and within the existing right-of-way.

(6) The variance will not result in increased flood hazards, present additional threats to public safety, be an extraordinary public expense, create a nuisance, or conflict with existing state or other local laws.

The proposed project has been designed and will be constructed in accordance with all applicable rules and regulations. Northwestern Energy assumes all responsibility for construction, operation, and maintenance of this transmission line. The proposed project is a replacement of an existing line which also has structures located within the floodplain. All structures have been designed to meet National Electric Safety Code (NESC) requirements, with minimal placement of fill aboveground.

(7) A reasonable alternate location that would not require a variance is not available.

All alternative routes studied for this project would also include one or more floodway crossings, would result in greater disturbance to landowners, residents, wildlife, and riparian habitat, and do not utilize the existing right-of-ways for the majority of the project.

(8) The proposed use would be adequately protected and flood-proofed.

The proposed structures were designed to have minimal aboveground fill for the project, to avoid the potential of increased flood debris accumulation and also to avoid an increase in the base flood elevation. There is very minimal danger that transmission structures will be swept downstream, as they have been appropriately designed according to National Electric Safety Code (NESC).

Please refer to the *Joint Application for Proposed Work in Montana's Streams, Wetlands, Floodplains, and Other Water Bodies* submitted in association with this variance request for additional information.

EXHIBIT A-3

36.15.602 DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

(b) the excavation meets all applicable laws and regulations of other local and state agencies; and

(c) excavated material is stockpiled outside the designated floodway;

(2) railroad, highway, and street stream crossings provided that the crossings are designated to offer minimal obstruction to flood flow;

(3) limited filling for highway, street, and railroad embankments not associated with stream crossings provided that:

(a) reasonable alternative transportation routes outside the designated floodway are not available; and

(b) such floodway encroachment is located as far from the stream channel as possible;

(4) Buried or suspended utility transmission lines provided that:

(a) suspended utility transmission lines are designed such that the lowest point of the suspended line is at least 6 feet higher than the elevation of the base flood;

(b) towers and other appurtenant structures are designed and placed to withstand and offer minimal obstruction to flood flows; and

(c) utility transmission lines carrying toxic or flammable materials are buried to a depth at least twice the calculated maximum depth of scour for the base flood. The maximum depth of scour may be determined from any of the accepted hydraulic engineering methods, but the final calculated figure shall be subject to approval by the permit issuing authority;

(5) storage of materials and equipment provided that:

(a) the material or equipment is not subject to major damage by flooding and is properly anchored to prevent flotation or downstream movement; or,

(b) the material or equipment is readily removable within the limited time available after flood warning. Storage of flammable, toxic, or explosive materials shall not be permitted;

(6) domestic water supply wells provided that:

(a) they are driven or drilled wells located on ground higher

than surrounding ground to assure positive drainage from the well;

(b) well casings are watertight to a distance of at least 25 feet below the ground surface;

(c) water supply and electrical lines have a watertight seal where the lines enter the casing;

(d) all pumps and electrical lines and equipment are either of the submersible type or are adequately floodproofed; and

ARM Bureau Home Search Help

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EXHIBIT A-4

Laura Hendrix

From: Schock, Larry [lschock@mt.gov]
Sent: Thursday, July 13, 2006 2:47 PM
To: Laura Hendrix
Cc: Siroky, Laurence; Voeller, Terry
Subject: Northwestern Energy, FA-06-11

Laura,

This application looks pretty good. The poles shouldn't have much of an impact, if any, since the highway is between the river and poles 0-27 thru 0-29, and poles 0-4 thru 0-15 are in the hydraulic shadow of the bridge and approach fill. This includes the poles that will utilize the special CMP structures.

I am however a little concerned about pole 0-9. It is located on the bank of the outside bend in the river in an area very close to outlet of the bridge opening. This is a transitional area from a flow regime standpoint because of the bridge and the outside bend of a river is an area the usually sees the highest erosive forces of the flows. Therefore, this could make pole 0-9 very susceptible to being undercut or washed out by bank erosion. I would hate to see the pole lost to erosion or the power company have to come back in a year or two and need to apply for rip rap in order to protect that pole.

I would recommend that the possible erosion of pole 0-9 be discussed with Northwestern's engineer, and if they do not feel that there is any concerns, a letter from Northwestern stating that (along with a PE stamp) should be put into the file.

Larry A. Schock, CFM
MT DNRC MRO
(406) 721-4284
lschock@mt.gov